**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.**

Writ Petition No. 142 (S/S) of 2005

Ravindra Singh Negi,
son of Sri Shiv Singh Negi,
resident of Village – Khola,
Post – Kholachouri,
District – Pauri Garhwal.

.....Petitioner.

Versus.

1. State of Uttaranchal through Chief Secretary / Commissioner, Department of Social Welfare (Women), Dehradun.
2. Additional Secretary, Department of Social and Women Welfare, Government of Uttaranchal, Dehradun, District – Dehradun.
3. Director, Department of Social Welfare, Uttaranchal, Haldwani, District – Nainital.
4. District Probation Officer, District – Haridwar.

.....Respondents.

**Hon'ble M.M. Ghildiyal, J.**

Heard Sri Rakesh Thapliyal, learned counsel for the petitioners and learned standing counsel for respondents.

By means of this writ petition, the petitioners have prayed to issue a writ in the nature of Certiorari quashing the order dated 27.09.2004 passed by respondent no. 1 and order dated 11.10.2004 passed by the Additional Secretary, Department of Social and Women Welfare, Dehradun by which the services of the petitioner who was appointed as Class IV employee.

The first submission of the petitioner is that petitioner was appointed against the vacant post and the post occupied by him is still in existence in the department. The second submission of the petitioner is that no opportunity of hearing was granted to the petitioner prior to terminating the services of the petitioner. The third submission of the petitioner is that petitioner was appointed

on his respective post till the finally selected candidates join on the post.

According to the petitioner till date no body has been appointed for the post which was being held by the petitioner and as such, he is entitled to continue till the finally selected candidates join on the post as stated in the appointment letter itself.

Respondents have filed their counter affidavit and stand taken by the respondents in the counter affidavit is that it is true that the post on which the petitioner has been appointed was created by the Competent Authority but the said post was in existence till 28.02.2004 and there was no occasion to appoint the petitioner two days prior when the period of the said posts was going to be expired. Respondents have further submitted that petitioners were appointed by the Additional Secretary, Department of Social and Women Welfare, Dehradun who is not the Appointing Authority and the Appointing Authority for the Class III and IV employees in the department is the Director, Social and Women Welfare, Dehradun.

Learned counsel for the petitioner has submitted that at that relevant time, there was no Director, Social Welfare, Dehradun. According to the letter dated 02.08.2003 issued by the Secretary, Social Welfare the work of the department was distributed amongst two Additional Secretaries, Department of Social and Women Welfare, Dehradun and the person who has appointed the petitioners had jurisdiction to make the appointment in the Department on Class III and IV posts as per aforesaid order of the Secretary, Social Welfare, Dehradun.

Learned counsel for the petitioner has drawn my attention to the letter dated 18.03.2005 sent by Director, Social Welfare, Dehradun addressed to the Secretary, Social Welfare, Dehradun, wherein it is stated by the Director that the work relating to social and women welfare was not being looked after by the Director, Social Welfare prior to July, 2004.

It is not disputed that no Director, Social Welfare was working when the petitioners were appointed. Secretary, Social Welfare, in his letter dated 02.08.2003 has distributed the work pertaining to social and women welfare amongst the two additional secretaries. On the basis of the aforesaid letter, petitioners were appointed.

I do not find any irregularity in making appointment in Class III and IV posts against the vacant post in the Social and Women Welfare Department by the Additional Secretary, Department of Social and Women Welfare, Dehradun.

The submission of the respondents is that the posts were created only for the period of one year which was expired on 28.02.2004 is also not acceptable.

Learned counsel for the petitioner has drawn my attention towards the letter dated 08.06.2005 issued by Secretary, Social Welfare and letter dated 02.06.2005 issued by Additional Secretary, Social Welfare by which the posts were created for Rajkiya Bal Grah, Haridwar and Rajkiya Vishesh Grah, Haridwar and the period was extended upto 28.02.2006.

Petitioner is working against this post. The submission of the petitioner is that the tenure of the post which was being held by petitioner has been extended by the Government.

It is not disputed that the post against which the petitioner was working was duly sanctioned and as per condition of the appointment letter petitioner was permitted to continue till the newly selected candidates join their duties. It is also not disputed that nobody has been appointed on these posts so far it is also not disputed by either of the parties that no opportunity was given to the petitioner prior to passing the termination order.

Para 12 of the writ petition is stated as under:

*"That one more relevant fact is also being brought to the notice of this court that till date the State of Uttaranchal have not passed any order with regard to abolishing of the vacancies which were sanctioned in pursuance to the various government orders as referred above against which each of the petitioner were appointed meaning thereby the vacancies*

*against which the petitioner were appointed are still existing and continuing and therefore, there is no justification for terminating each of the petitioner by the impugned order and therefore, the same is liable to be quashed.*

In reply, respondents have stated that the contents of paras 8 to 18 of the writ petition are misconceived erroneous and hence, are strongly denied in view of the facts stated in the preceding paras of the affidavit.

In the preceding paras it is not stated that the posts held by the petitioners have been abolished or the period has not been extended.

For the reasons stated above, writ petition is allowed. Order dated 27.09.2004 passed by respondent no. 1 and order dated 11.10.2004 passed by the Additional Secretary, Department of Social and Women Welfare, Dehradun are quashed. No order as to costs.

**(M.M. Ghildiyal, J.)**

October 17, 2005
SKSharma